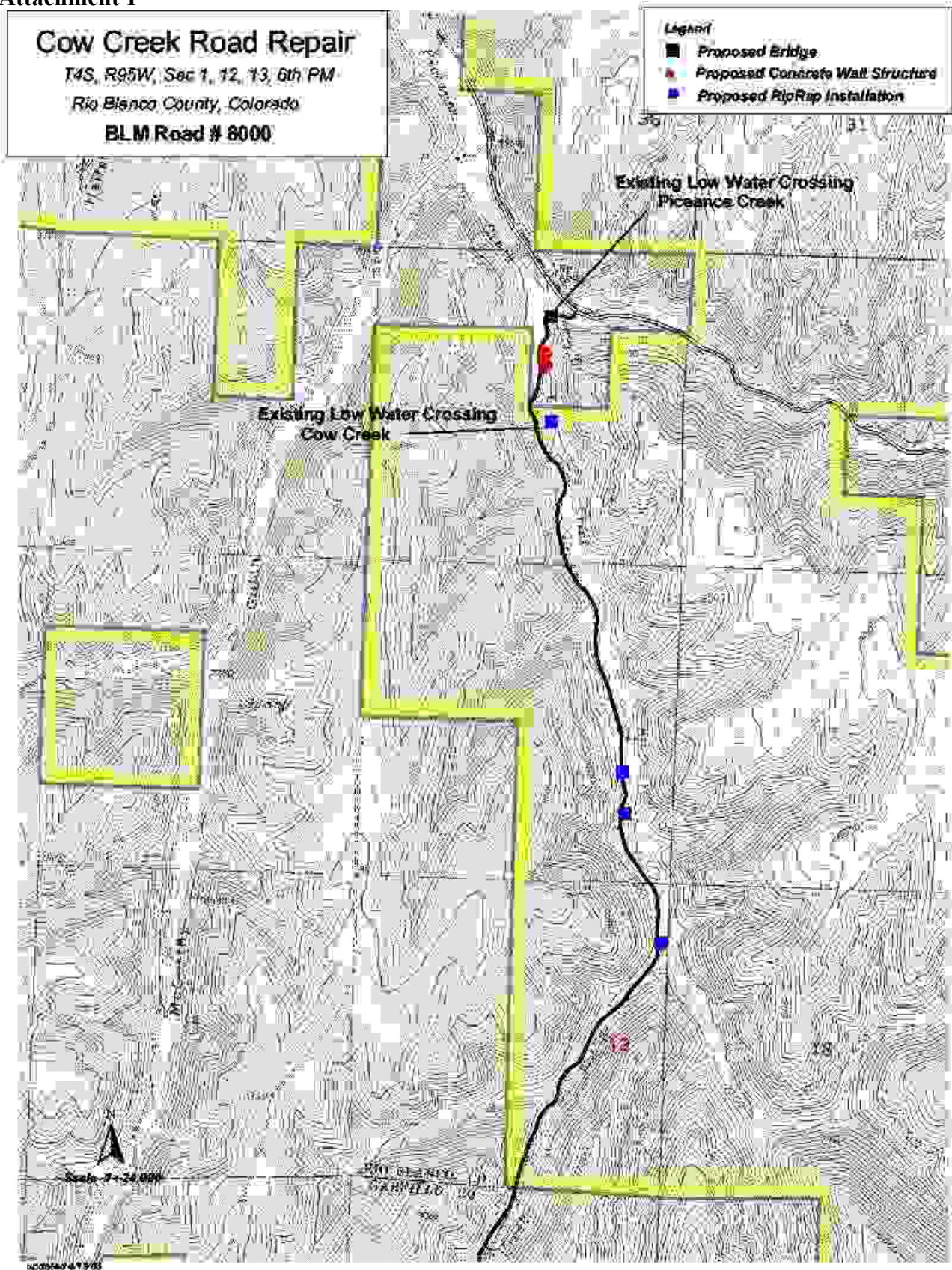
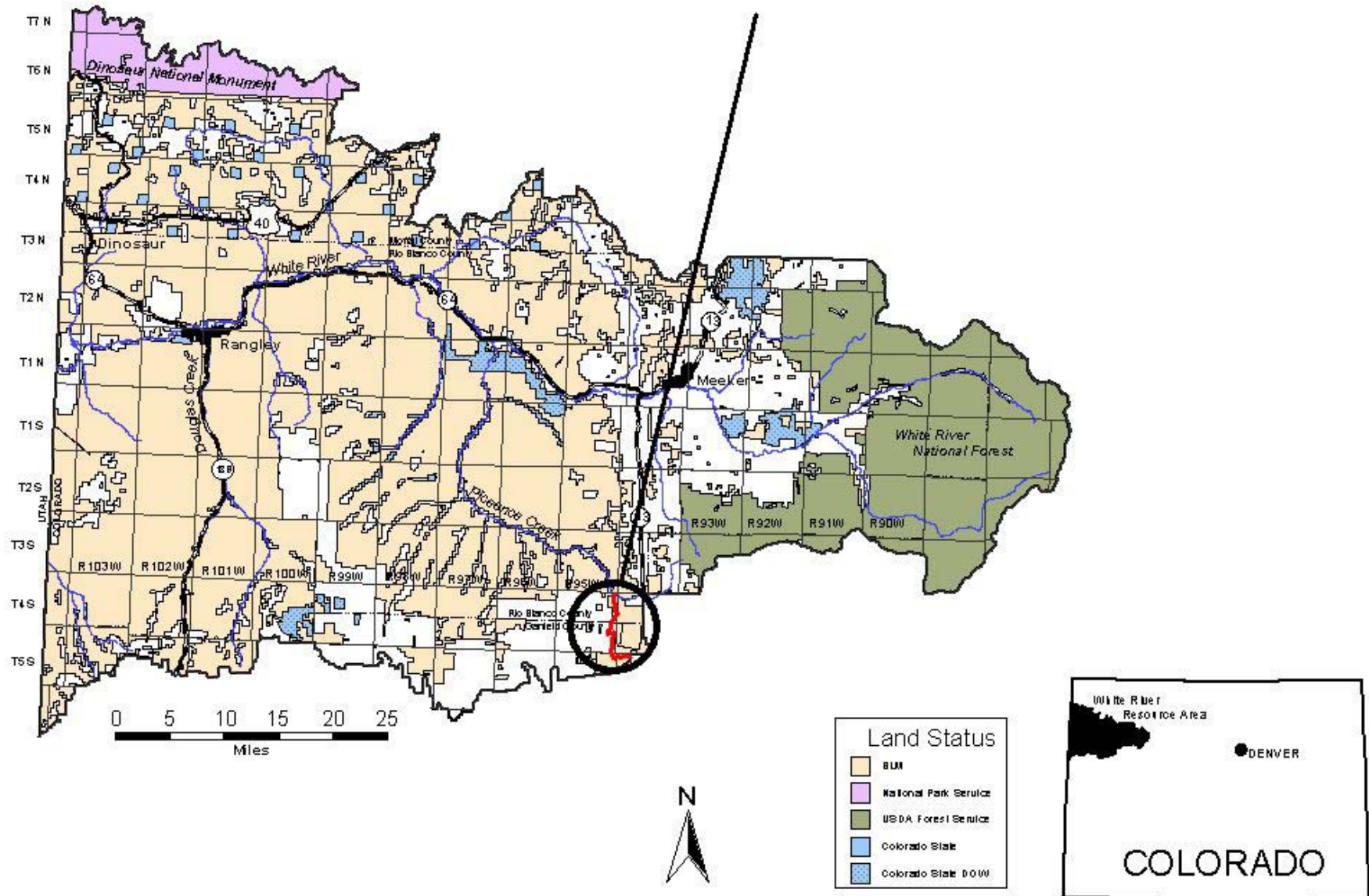


Attachment 1



Location of Proposed Action CO-110-2005-110-EA



ENVIRONMENTAL ASSESSMENT

NUMBER: CO-140-2002-0083-EA / CO-WRFO-03-031-EA

CASEFILE/PROJECT NUMBER: N/A

PROJECT NAME: Cow Creek Road Repair

LEGAL DESCRIPTION: T4S, R95W, 6th P.M.
Section 1, W2NE3, NW3SE3
Section 12, E2SE3
Section 13, NE3NE3, 5 Acres total

APPLICANT: BLM

NEED FOR PROPOSED ACTION: To protect BLM's Cow Creek Road #8000 and easement from further damage caused by natural erosion of Cow Creek and Piceance Creek. Improvement of the Cow Creek Road is essential to BLM's ability to manage the public land resources on the Roan Plateau and continue to provide safe travel conditions for the public. Benefiting Activities would be Recreation, Deferred Maintenance (1653) and Soil, Air, Water (1010)

DESCRIPTION OF PROPOSED ACTION AND ALTERNATIVES CONSIDERED (including the No Action Alternative):

Background/introduction: The Cow Creek Road Repair Project is a BLM Construction Project submitted to the BLM Washington Office in 1998. Cow Creek Road (BLM #8000) is the primary route providing public access to over 50,000 acres of public land, including the recently transferred Roan Plateau. BLM has approved the funding to cover materials and labor costs, contract specifications, contract preparation and administration. It has also completed resource clearances related to repairing and improving the initial two miles. The project includes the construction of engineered structures within a 60-foot wide road easement (C-45417) that would improve public safety for travelers. The proposed project, when submitted in 1998, called for construction of two creek crossings to mitigate vehicle impacts associated with low water crossings, and the installation of wall structures to protect the road from stream erosion. At the time of submission to the BLM Washington Office, the estimated project funding requirement was \$176,000. Presently, BLM has about \$130,000 available to implement the project, provided it specifically includes upgrades for the low water crossings and wall structures to prevent stream course erosion.

Over the years, BLM Road #8000 has had various road failures at the proposed structure sites, primarily as a result of peak stream flows. A 400-foot road segment has been under-cut by Cow Creek with periodic sloughing of material from the road that is gradually reducing the drivable road surface. It is simply a matter of time before Cow Creek erodes further into the roadbed and effectively closes off vehicle travel beyond this damaged point. The relatively narrow easement width and steep hillside at this site restrict the potential to move the road away from the failing section beyond a few feet. Two low water crossings within the project area have also periodically succumbed to peak flows. Emergency road funds typically are requested and allocated to hire equipment and repair damage that occurs during the high flows. Either spring snowmelt or short duration, high intensity summer thunderstorms are the typical sources of these high flows. Damage to the crossings is common during years of high flow stream run-off.

The location for the proposed action are entirely within the White River Resource Area, Managed by the White River Field Office (WRFO) in Meeker, CO. However, the Glenwood Springs Field Office (GSFO) usually schedules maintenance and improvements for this road because it is the primary motorized route to access public lands on the Roan Plateau which are managed by GSFO. GSFO will closely coordinate all phases of this project with BLM personnel at the WRFO including approval of the Decision Record/FONSI.

Proposed Action: Install engineered concrete block wall structures along the eastern bank of Cow Creek to protect the road from erosion and undercutting in two locations (see attached Project Map). Actual dimensions of these walls are not yet determined pending feasibility and engineering analysis. Geotextile fabric would be placed in the embankment to further protect the block structure from erosional forces. The existing range fence would be reinstalled along the top edge of the concrete walls to control grazing livestock and deter the traveling public from wandering onto adjacent private lands. Other sites shown as riprap installation on the project map would involve placement of large rocks in the streambed using a trackhoe equipped with a thumb.

An additional component of the project would be the construction of a prefabricated bridge with concrete abutments at the Piceance Creek crossing using the most cost-efficient purchase and install method as determined by engineering analysis. Traffic loadings for the bridge would be designed to accommodate legal weight limits (HS30 with 54 ton GVW load capability). The proposed bridge dimensions would be 16 feet in length and 24 feet in width designed to handle 18 wheel livestock trucks. Concrete abutments would be poured to support the bridge. Bridge and guardrails would have a weathered steel finish. The bridge surface would be comprised of Corrugated Bridge decking with wood runner planking. Typically gravel (road base) is placed on this decking after installation.

Implementation of this project would be scheduled for contract bid in late summer, 2003 with the installation of structures planned for spring, 2004 to avoid traffic conflicts during the fall, 2003 hunting seasons. Actual installation of walls and/or bridge abutments would be delayed to avoid high stream flows during the spring months. Public notice regarding the installation of structures would be provided via news release and posted signs. Temporary road closures would occur to install these structures; timing and duration of such closures are open for discussion. BLM has consultation with Army Corps of Engineers and obtained the appropriate permit to install these structures within the drainages. A portion of the road crosses private land, and BLM has an existing easement with the private landowners. The landowners, Ron and Patty Fazzi, have been consulted regarding the project plans. They are in general agreement with the project objectives. BLM plans to meet with the landowners again in the near future to update and finalize the project plans. All work would be confined to the existing road easement boundaries; although permission will be sought from the Fazzi's to work outside the easement boundaries during structure installations.

Feasibility analysis of the Cow Creek low water crossing (see attached map) revealed that this broad, flat channel is best-served with the existing low water crossing and periodic road maintenance. No improvements are planned at this location aside from the riprap placement scheduled east and upstream of this crossing.

No Action Alternative. Continue annual maintenance and repair of BLM Road #8000 across the easement length including the two existing stream crossings.

PLAN CONFORMANCE REVIEW: The proposed action is subject to the following plan:

Name of Plan: White River Record of Decision and Approved Resource Management Plan (ROD/RMP). The proposed action has been reviewed for conformance with this plan (43 CFR 1610.5, BLM MS 1617.3)

Date Approved: July 1, 1997

Page or Decision Number: The action is in conformance with decisions described on page 2-52: “Administrative and public access will be obtained through acquisition of easements, acquisition of land through exchanges, road construction or renovation, or by other appropriate means.”

Additionally, this project would conform to the pending Roan Plateau Resource Management Plan/Environmental Impact Statement as this plan identifies Cow Creek Road as the primary public access route to the plateau. It is critical to the future management of the Roan Plateau that the Cow Creek Road and public access be maintained as a safe, passable travel corridor.

AFFECTED ENVIRONMENT/ENVIRONMENTAL IMPACTS / MITIGATION MEASURES:

CRITICAL ELEMENTS

AIR QUALITY: Air quality in the area of the proposed project is very good.

Proposed Action: Air quality would be impacted by dust and equipment exhaust during construction of the Cow Creek Road improvements. These negative impacts would be localized to the immediate area around the road and would last for a short period of time. The level of impacts to air quality would be minimal.

No Action Alternative: There would be no impacts to air quality above those already occurring from use of the road (i.e. dust and exhaust from vehicle use). These impacts are minimal. The negative impacts to air quality would be less under this alternative because construction work would not be required.

CULTURAL RESOURCES:

Proposed Action: A field review of the proposed work locations indicates that all locations are either down in the alluvial bottoms or along steep slopes with abundant talus deposits. Field examinations on August 5, 2002 did not produce any indications that cultural resources were likely to be present in any of the locations where work is proposed. It is not anticipated that there will be any impacts to cultural resources in any of the work locations.

No Action Alternative: There would be no impacts to any known or anticipated cultural resources under the no action alternative.

Mitigation: 1. The operator is responsible for informing all persons who are associated with the project operations that they will be subject to prosecution for knowingly disturbing historic or archaeological sites, or for collecting artifacts. If historic or archaeological materials are uncovered during any project or construction activities, the operator is to immediately stop activities in the immediate area of the find that might further disturb such materials, and immediately contact the authorized officer (AO). Within five working days the AO will inform the operator as to:

- whether the materials appear eligible for the National Register of Historic Places;
- the mitigation measures the operator will likely have to undertake before the construction may proceed

2. Pursuant to 43 CFR 10.4(g) the holder of this authorization must notify the AO, by telephone, with written confirmation, immediately upon the discovery of human remains, funerary items, sacred objects, or objects of cultural patrimony. Further, pursuant to 43 CFR 10.4(c) and (d), you must stop activities in the vicinity of the discovery and protect it for 30 days or until notified to proceed by the authorized officer.

ENVIRONMENTAL JUSTICE: The proposed action is not expected to create a disproportionately high adverse effect on minority or low-income populations within the area.

FARM LANDS (PRIME or UNIQUE): There are no farmlands that will be impacted by this project

FLOODPLAINS, WETLANDS, RIPARIAN ZONES: The proposed structures are located in a section of Cow Creek that is a scoured channel. Other than some young cottonwood trees that occur near the proposed gabion structure, riparian vegetation does not exist at the proposed structures; therefore, there will be no impacts to riparian zones.

INVASIVE, NON-NATIVE SPECIES: Revegetation of the disturbed areas should prevent invasion of noxious weeds and prevent erosion. The recommended seed mix is: 5 pounds of Western Wheatgrass @ 5#/acre, and Bluebunch wheatgrass @ 5#/acre broadcast applied on a rough seed bed. These species are considered native and would not introduce invasive or non-native species.

NATIVE AMERICAN RELIGIOUS CONCERNS: There are no known Native American Religious Concerns regarding the proposed action.

THREATENED or ENDANGERED SPECIES: Complete inventories have not been conducted at the project location. However, no known Federal threatened or endangered, or State listed threatened or endangered species, or Federal proposed or candidate species have been documented as occurring in the area. There are no BLM Sensitive plants known to occur within the project area. A variety of migratory birds, common to sagebrush and mixed mountain shrubland habitats, may be present within and near the existing road. No raptor species are known to reside in the immediate area of the proposed road. However, golden eagles, red-tailed hawks, and Cooper's hawks are located in the nearby vicinity. Migratory birds and BLM Sensitive wildlife species known to reside near the road are addressed below.

Migratory Birds

Proposed Action: Riparian vegetation in the areas proposed for construction is very sparse and little impact is anticipated. The proposed action should not result in any significant impact to migratory bird species. It is possible that construction activities will result in the temporary displacement of some birds to adjacent suitable habitats. In addition, the upgrade from a low water crossing to a bridge structure across Piceance Creek may facilitate increased vehicle use of the road. Increased vehicle use may result in longer-term displacement of birds away from habitats located close to the road.

No Action: No impact

Raptors

Proposed Action: Raptors should not be affected by the upgrades proposed for this existing road.

No Action: No impact.

WASTES, HAZARDOUS or SOLID: There are no hazardous materials involved with this project. Hence, there is no impact.

WATER QUALITY, SURFACE or GROUND: The proposed structures would be located along Piceance and Cow Creeks. Both streams have an intermittent flow pattern within the project area. A gauging station was operated by USGS on Piceance Creek approximately 12 miles downstream of the project location. Data from that station (based on 25 years of record) indicate a seasonal variation of flow. High flows generally occurred in May, and base flow conditions occurred September through February. Sediment data collected at that station ranged from 6 milligrams per liter (mg/l) to 20,300 mg/l. During base flow conditions the sediment levels were generally below 150 mg/l. Concentrations during high flow were generally in the 5,000 to 7,500 mg/l range. While no flow or water quality data are available for Cow Creek, the flow pattern and sediment concentrations are projected to be similar to that in Piceance Creek.

Proposed Action: In the short-term, construction of concrete walls and footers for either streambank stabilization or bridge abutments could introduce sediment into the creeks. The magnitude of impact would be dependent on flow at the time of construction. If construction occurs during a low to no flow period, the quantity of sediment reaching perennial water would be very low, probably well within the natural variation for either stream. In the long term, the sediment that was being introduced to the creeks from stream scour in the vicinity of the structures would be eliminated. Placement of riprap along several reaches of Cow Creek would have a similar effect to that for the concrete structures. If a bridge were installed on Piceance Creek, the crossing of the creek by vehicles would be eliminated. Additionally, the use of heavy equipment in the stream channel during maintenance activities would be eliminated. Consequently, sediment and potential hydrocarbons introduced by vehicle traffic or maintenance activities would be eliminated.

No Action: Not treating the reaches of active streambank scour along the Cow Creek Road would allow continued introduction of sediment to the creek from those areas. Maintenance/reconstruction of the road surface in the areas eroded by Cow Creek would also introduce sediment into the creek. Reconstruction

of the low water crossings following flood events, and continued crossing by vehicles would contribute sediment and potentially hydrocarbons into Piceance Creek and Cow Creek.

WILDERNESS, AREAS of CRITICAL ENVIRONMENTAL CONCERN, WILD and SCENIC RIVERS: None of the above designations or Conservationists Proposed Wilderness Areas exists within the area affected by this action.

NON-CRITICAL ELEMENTS

PALEONTOLOGY: The work areas are located in what is mapped as the Parachute Creek Member of the Green River Formation. The BLM has categorized the Parachute Creek Member of the Green River Formation as a Class I fossil bearing formation, meaning that it is a known producer of significant, especially vertebrate, fossils. No fossils were noted during the August 5, 2002 field tour though that does not mean no fossils were present.

Proposed Action: Most of the proposed action involves placing material in stream bottoms and along talus toe slopes. Placing materials on top of the talus should not pose a significant threat to the fossil resources. However, in those places where it becomes necessary to excavate into the underlying rock substrate to prepare solid anchor points for gabions, retaining walls or widening of the road way by cutting into the slope there is the potential to impact fossil resources.

No Action Alternative: The No-Action Alternative would have no impacts to any known or anticipated fossil resources in the project area.

Mitigation: If paleontological materials (fossils) are uncovered during project activities, the operator is to immediately stop activities that might further disturb such materials, and contact the authorized officer (AO). The operator and the authorized officer will consult and determine the best option for avoiding or mitigating paleontological site damage. If, at any time, it becomes necessary to excavate into the underlying rock substrate for any reason an paleontologist shall be present to examine the excavation for the presence of fossil materials.

VISUAL RESOURCES: Private Landowners (Ron and Patty Fazzi) have requested that any concrete wall structures be designed to blend with the existing natural colors of the landscape. The bridge and guard rails would have a weathered “rust” appearance. The proposed block wall structures would be made of gray material.

The proposed action is in a Class Two Visual Resource Management Area. The objective of this class is to retain the existing character of the landscape. The level of change to the characteristic landscape should be low. Management activities may be seen, but should not attract the attention of the casual observer. Any changes must repeat the basic elements of form, line, color, and texture found in the predominant natural features of the characteristic landscape.

Proposed Action: Some of this project will be on private land and therefore not affect the visual resources managed by the BLM. Those parts of the project on BLM land will not violate the goals of Visual Resource Management for a Class Two area.

No Action Alternative: There would be no impacts.

Mitigation: None required.

ACCESS AND TRANSPORTATION: The portion of BLM Road 8000 where the proposed action will take place, borders, but is not included in the Cow Creek Seasonal Motorized Vehicle Closure Area. In accordance with the White River ROD/RMP (July 1997) the Cow Creek Seasonal Closure Area is closed to motorized vehicle traffic from August 15 through November 30 each year to allow for quality hunting.

Proposed Action: The proposed actions will result in increased motorized traffic into the Cow Creek area, and could lead to increased incidents of motorized vehicle use in the seasonal closure area during the closed period.

No Action Alternative: If the proposed structures (concrete walls, riprap and bridge) are not installed, it is likely that during future high peak flows, stream erosion could undercut the road bed and/or existing low water crossings. Motorized travel across Piceance Creek during high flows would continue to be unsafe for the public and potentially result in loss of private property.

Mitigation: BLM will place additional signs along the east side of BLM Road 8000 to notify the public that the Cow Creek Area is closed to motorized vehicles from August 15 through November 30.

LIST OF PREPARERS:

Jim Byers, Natural Resource Specialist, GSFO
Max McCoy, Natural Resource Specialist, WRFO
Jim Scheidt, Hydrologist, Grand Junction Center
Gordon Gardunio, Engineering Field Office,
Tom Fresques, Wildlife Biologist, GSFO
Michael Selle, Archaeologist/paleontology, WRFO
Cheryl Harrison, Archaeologist/Native American Coordinator, GSFO
Kay Hopkins, Outdoor Recreation Planner, GSFO
Vaughn Hackett, Realty Specialist, GSFO
Scott Pavey, Planning and Environmental Coordinator, WRFO

PERSONS/AGENCIES CONSULTED:

Ron and Patty Fazzi, Adjacent Landowners along Road Easement
US Army Corps of Engineers, Grand Junction

FONSI/DECISION RECORD

CO-140-2002-0083 EA/CO-WRFO-03-031-EA

Cow Creek Road Repair

FONSI: The environmental assessment, analyzing the environmental effects of the proposed action, has been reviewed. The approved mitigation measures result in a finding of no significant impact on the human environment. Therefore, an environmental impact statement is not necessary to further analyze the environmental effects of the proposed action.

DECISION AND RATIONALE: It is my decision to approve the proposed action to construct the bridge, concrete wall structures, and install rip rap on Cow Creek Road (BLM 8000) as described in the proposed action, with the mitigation measures outlined below. This action will improve public access to public lands in the area, and greatly improve safety for public users of this road.

MITIGATION MEASURES:

1. The operator is responsible for informing all persons who are associated with the project operations that they will be subject to prosecution for knowingly disturbing historic or archaeological sites, or for collecting artifacts. If historic or archaeological materials are uncovered during any project or construction activities, the operator is to immediately stop activities in the immediate area of the find that might further disturb such materials, and immediately contact the authorized officer (AO). Within five working days the AO will inform the operator as to:

- whether the materials appear eligible for the National Register of Historic Places;
- the mitigation measures the operator will likely have to undertake before the construction may proceed

2. Pursuant to 43 CFR 10.4(g) the holder of this authorization must notify the AO, by telephone, with written confirmation, immediately upon the discovery of human remains, funerary items, sacred objects, or objects of cultural patrimony. Further, pursuant to 43 CFR 10.4(c) and (d), you must stop activities in the vicinity of the discovery and protect it for 30 days or until notified to proceed by the authorized officer.

3. If paleontological materials (fossils) are uncovered during project activities, the operator is to immediately stop activities that might further disturb such materials, and contact the authorized officer (AO). The operator and the authorized officer will consult and determine the best option for avoiding or mitigating paleontological site damage. If, at any time, it becomes necessary to excavate into the underlying rock substrate for any reason an paleontologist shall be present to examine the excavation for the presence of fossil materials.

4. BLM will place additional signs along the east side of BLM Road 8000 to notify the public that the Cow Creek Area is closed to motorized vehicles from August 15 through November 30.

SIGNATURE OF AUTHORIZED OFFICIALS:



White River Field Manager

6/18/03

Date

ATTACHMENTS: Project Maps

131122
 State of Colorado--Rio Blanco Co.
 Filed for record the 22 day of March 1965 at 10:12 o'clock
 Reception No. _____
 By Deputy Clerk DEPUTY CLERK
 Indexed
 RECORD

131122

HUNTING AND FISHING EASEMENT
 AND RIGHT-OF-WAY FOR A ROAD

BOOK 268 PAGE 77

THIS INDENTURE, made this 15TH day of JULY, 1965

between E. CLARK JONES AND E.C. JONES of Rio Blanco

Colorado, being the owner(s) of the hereinafter described land and Right-of-Way in Rio Blanco County, State of Colorado, Party of the First Part and the State of Colorado for the use and benefit of the Game, Fish and Parks Commission, Party of the Second Part.

Party of the First Part for and in consideration of the sum of EIGHT THOUSAND AND NO/100-- -- -- -- -- (\$8,000.00) does hereby give and grant in perpetuity to the Party of the Second Part an easement or Right-of-Way, sixty (60) feet in width for access by the public located in the hereinafter described land lying and being situate in Rio Blanco County and Garfield County, Colorado, to-wit

T.4S., R.95W., 6th P.M.

Section 1, W $\frac{1}{2}$ NE $\frac{1}{4}$

Section 24, N $\frac{1}{2}$ SW $\frac{1}{4}$

Section 36

Right-of-way across Section 36 will be to junction of divide road, and from that point west on said road to Section 35.

and Party of the First Part does hereby relinquish any rights and claims for above described road and extension of said road on, over or through lands not owned by Party of the First Part.

Title insurance or an abstract of title certified to date is

to be furnished for examination to Party of the Second Part by
Party of the First Part.

IN WITNESS WHEREOF, the parties have hereunto set their hands
and seals the day and year first above written.

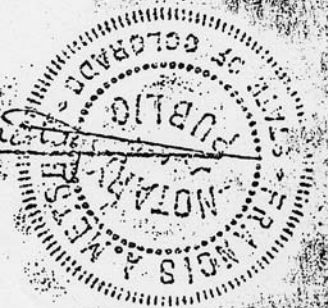
E. Clark Jones
Edmund Jones

The foregoing instrument was acknowledged before me this 8th
day of July, 1965.

My commission expires _____ My Commission expires November 14, 1967

Witness my hand and official seal.

Francis A. Mott
Notary Public



CONSENT TO EASEMENT

BOOK 268 PAGE 79

For and in consideration of the sum of One Dollar and other good and valuable considerations, the undersigned, holder of an encumbrance covering lands of which the following described easement is a part, does hereby consent to the granting of said easement and agrees to be bound by the terms thereof.

Easement executed the 15th day of July, 1965, by and between E. CLARK JONES and E. C. JONES, of the County of Rio Blanco, State of Colorado, parties of the first part, and the STATE OF COLORADO for the use and benefit of the GAME, FISH AND PARKS COMMISSION, party of the second part, assigning a perpetual easement for 60 feet in width for access by the public located in the hereinafter described land lying and being situate in Rio Blanco and Garfield Counties, Colorado, to-wit:

T. 4S., R. 95W., 6th P.M.
Section 1, W $\frac{1}{2}$ NE $\frac{1}{4}$
Section 24, N $\frac{1}{2}$ SW $\frac{1}{4}$
Section 36

Right-of-way across Section 36 will be to junction of divide road, and from that point west on said road to Section 35.

RIFLE PRODUCTION CREDIT ASSOCIATION

By [Signature] Secretary-Treasurer

ATTEST:

[Signature]
Ass't. Secretary-Treasurer

STATE OF COLORADO,)
) ss.
COUNTY OF GARFIELD.)

The foregoing Consent to Easement was acknowledged before me this 26th day of August, 1965, by J. H. Jackson, Secretary-Treasurer and Jerry Cook, Assistant Secretary-Treasurer for Rifle Production Credit Association.

WITNESS my hand and official seal.

My Commission expires June 26, 1967

Francis L. Coulter
Notary Public

CONSENT TO EASEMENT

For and in consideration of the sum of One Dollar and other good and valuable considerations, the undersigned, holder of an encumbrance covering lands of which the following described easement is a part, does hereby consent to the granting of said easement and agrees to be bound by the terms thereof.


Easement executed the 15th day of July, 1965, by and between E. CLARK JONES and E. C. JONES, of the County of Rio Blanco, State of Colorado, parties of the first part, and the STATE OF COLORADO for the use and benefit of the GAME, FISH AND PARKS COMMISSION, party of the second part, assigning a perpetual easement for 60 feet in width for access by the public located in the hereinafter described land lying and being situate in Rio Blanco and Garfield Counties, Colorado, to-wit:

T. 4S., R. 95W., 6th P.M.
Section 1, W1/2NE1/4
Section 24, N1/2SW1/4
Section 36

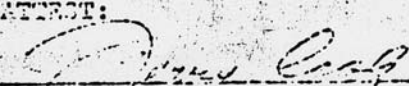
Right-of-way across Section 36 will be to junction of divide road, and from that point west on said road to Section 35.

RIFLE PRODUCTION CREDIT ASSOCIATION

By


Secretary-Treasurer

ATTEST:


Ass't. Secretary-Treasurer

STATE OF COLORADO,)
) ss.
COUNTY OF GARFIELD.)

The foregoing Consent to Easement was acknowledged before me this 26th day of August, 1965, by J. H. Jackson, Secretary-Treasurer and Jerry Cook, Assistant Secretary-Treasurer for Rifle Production Credit Association.

WITNESS my hand and official seal.

My Commission expires June 26, 1967


Notary Public

2300
(7-140)

August 6, 1985

Mr. Tom Lines
Box 1181
Meeker, Colorado 81641

Dear Mr. Lines:

I am writing to request an official statement from your office concerning the rights granted in the DOW easement on the Cow Creek road located in T. 4 S., R. 95 W., 6th P.M. Refer to the enclosed easement granted to DOW by E. Clark Jones and E. C. Jones in 1965. The current property owner is requiring BLM employees to call for permission before using the road.

We have on file a 1976 Solicitor's opinion that considers the rights granted to include public access. Further information in the file indicates that the intent by DOW was only to allow for hunting and fishing access.

We would greatly appreciate your written official position concerning the rights granted in order for this office to request a re-evaluation of the 1976 opinion by our solicitor.

Please contact Larry Hand at 243-6552 if you need further assistance.

Sincerely yours,

/s/ WRIGHT C. SHELDON

District Manager

Enclosure

bcc: GJFO Central Files
GJFO Routing & Chron
Jim Owings, CWSPA
OPFR:EVANS:lm1:7/31/85:01840



United States Department of the Interior 13 AM 10:00
OFFICE OF THE SOLICITOR

DENVER REGION
P.O. BOX 25007
DENVER FEDERAL CENTER
DENVER, COLORADO 80225

put
1/15

January 12, 1976

Memorandum

To: State Director, Colorado, BLM
From: Regional Solicitor, Denver
Subject: Cow Creek Access

This is in response to your memorandum of October 29, 1975, regarding an easement or right-of-way (hereafter referred to as right-of-way) obtained by the State of Colorado in July 1965 in lands in Sections 1, 24 and 36, T. 4 S., R. 95 W., 6th P.M.

An examination of the instrument granting the right-of-way, which is not a model of clarity, leads us to conclude that the owner of the right-of-way is the State of Colorado, and that it may be used by the public.

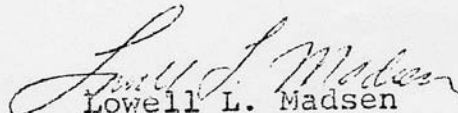
For what purpose the right-of-way may be used is unclear. In the body of the instrument conveying the easement there is no use restriction. The instrument is, however, titled "Hunting and Fishing Easement and Right-of-Way For A Road." It could be argued that, because of the caption, the right-of-way may only be used for hunting and fishing purposes. Nevertheless, it is our opinion that because there is no use restriction in the body of the instrument and because of the use of the word "and" in the caption between "Hunting and Fishing Easement" and "Right-of-Way For A Road," the right-of-way may be used by the public for uses other than hunting and fishing. For this reason, it is our opinion that the BLM, its licensees, and the general public may use the right-of-way for purposes other than hunting and fishing, including BLM administrative purposes.

You ask whether the BLM can spend maintenance money on the right-of-way. It is our opinion it can legally do so only if it is acting as the agent of the State of Colorado, the owner of the right-of-way, and if money spent is authorized for the improvement of lands the Federal Government does not own or control. The person entitled to a right-of-way has a legal right to maintain the property covered by the easement to the extent necessary to permit its use for the purpose of the way. Thus, the State of Colorado has the right to repair and maintain the right-of-way and can accomplish this by authorizing the BLM to do the work. You, however, must determine whether authority exists to use Federal funds to maintain and repair a non-Federal right-of-way.

The above conclusion would apply to your question as to whether the BLM can spend appropriated money for significant improvements to the road. Additionally, it would have to be decided whether the "significant capital improvements" would be necessary to the use of the way for the purpose for which it was granted. This, of course, will depend upon the nature of the proposed improvements.

You ask if the BLM should acquire new or additional rights in the right-of-way. This depends upon the needs of the BLM. It should be noted in this regard that as the State owns the right-of-way it has the legal right to convey it to another party, including the owner of the land the road traverses or the BLM. In the event there is a reconveyance to the landowner, the right-of-way will no longer exist and the access rights will be lost. If BLM acquires the right-of-way it has, of course, the legal right to maintain it and improve it, so it can be used for the purpose for which it was granted, i.e., access by the public.

If you have any additional questions regarding this matter, please contact the undersigned at 234-3175.


Lowell L. Madsen
For the Regional Solicitor

STATE OF COLORADO
Richard D. Lamm, Governor
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF WILDLIFE

James B. Ruch, Director
6060 Broadway
Denver, Colorado 80218 (297-1192)
711 Independent Avenue
Grand Junction, Colorado 81505



August 26, 1985

Wright Sheldon
District Manager
Bureau of Land Management
764 Horizon Drive
Grand Junction, Colorado 81501

RE: Cow Creek Access Road Easement

Dear Wright:

Your letter to Tom Lines regarding the status of the Cow Creek Access Road has been referred to this office. As you know, the Attorney General's Office rendered an opinion in this regard in 1976 which stated that use of the road is solely under the control of the Division of Wildlife acting on behalf of the Wildlife Commission. This opinion further stated that our agreement covered "Public Access" and is in no way limited to hunting and fishing.

Any commercial use of this road on the other hand is solely reserved by the Commission and may only be granted at the Commission's pleasure. Short-term uses (less than six months in duration) may be granted by the Regional Wildlife Manager, Division of Wildlife. Either long-term or short-term use must be applied for on application forms available from any Division of Wildlife Office or Area Wildlife Manager.

Routine use at current levels by Bureau of Land Management employees is not a matter of concern at this time. However, if the need to close the road for wildlife management purposes arises it is my opinion you would need to apply for use. If you are contemplating extraordinarily greater use of the road by your agency, the Department of Energy, or the U.S. Navy it is also my opinion you must apply for such use.

If you wish to discuss this matter further please contact Tom Lines or Bill Clark, Habitat Resource Manager in Grand Junction. I am in the process of soliciting an up to date opinion from the Ag's Office and I will keep you informed.

Sincerely,

Hal Burdick
Assistant Regional Manager

cc: Olson
Clark
Lines

HB:sw

DEPARTMENT OF NATURAL RESOURCES, David H. Getches, Executive Director • WILDLIFE COMMISSION, James C. Kennedy, Chairman
Timothy W. Schultz, Vice Chairman • Michael K. Higbee, Secretary • Richard L. Divilbiss, Member • Donald A. Fernandez, Member
Wilbur L. Redden, Member • James T. Smith, Member • Jean K. Tool, Member

Grand Junction Station	File
Date	File
DM	DM
P & EA	2
ADMIN	
L & RR	4
OPS	3
MIN	
GJ RA	4
GWS RA	4
C. FRES	ES

Attachment 7

Recorded at 2 o'clock P M. APR 28 1989
 Reception No. 401020 MILLER ALSDOFF, RECORDER
 GARFIELD COUNTY, COLORADO

BOOK 477 PAGE 836
 BOOK 753 PAGE 340

THIS DEED, Made this 20th day of April, 1989 between the
 STATE OF COLORADO acting by and through the DEPARTMENT OF NATURAL RESOURCES for
 the use and benefit of the DIVISION OF WILDLIFE and WILDLIFE COMMISSION
 (successors in interest to the Division of Game, Fish and Parks)

whose street address is 6060 Broadway, City of Denver, County of Adams, and
 State of Colorado, of the first part, and

THE UNITED STATES OF AMERICA and its assigns, acting through and authorized by
 Section 205 of the Federal Land Policy and Management Act of 1976
 (90 Stat. 2756: 43 U.S.C. 1715), of the second part,

Witnesseth, That the said party of the first part, for and in consideration of
 the assumption of maintenance by the party of the second part and assurance of
 continued public use for hunting and fishing purposes, does remise, release,
 grant, convey, and quitclaim unto the party of the second part, its successors
 and assigns forever, all the right, title, interest, claim and demand which the
 said party of the first part has in and to the Right-of-way for a road sixty
 (60) feet in width, being thirty (30) feet on either side of a centerline, and
 shown on the maps identified as Exhibits A and B attached hereto and made a
 part hereof, situate, lying and being in the

State of Colorado,
 and County of Rio Blanco
 T. 4 S., R. 95 W., Sixth Principal Meridian, Colorado
 Section 1: $W\frac{1}{2}NE\frac{1}{4}$
 and County of Garfield
 T. 4 S., R. 95 W., Sixth Principal Meridian, Colorado
 Section 24: $N\frac{1}{2}SW\frac{1}{4}$
 Section 36: $W\frac{1}{2}E\frac{1}{2}$, $SW\frac{1}{4}NW\frac{1}{4}$, $SW\frac{1}{4}$

The above-described right-of-way is described in Reception No. 131122 as filed
 in Book 268 at Page 77 at the Rio Blanco County Clerk and Recorder's Office and
 in Reception No. 232454 as filed in Book 371 at Page 314 at the Garfield County
 Clerk and Recorder's Office.

This grant shall be effective so long as the consideration specified above
 continues, and all rights shall revert to the party of the first part as soon
 as consideration is discontinued or if the party of the second part determines
 the right-of-way is no longer necessary for its purposes.

The acquiring agency is the Bureau of Land Management, United States Department
 of the Interior.

To have and to Hold the Same, Together with all and singular the appurtenances
 and privileges thereunto belonging or in anywise thereunto appertaining, and
 all the estate, right, title, interest and claim whatsoever of the said party
 of the first part, either in law or equity, to the only proper use, benefit and
 behoof of the said party of the second part, its successors and assigns,
 forever.

State of Colorado--Rio Blanco Co.
 filed for record the 1st day of June A.D. 1989 at 9:55 o'clock A M. by A. Wayne R. Wagner
 Reception No. 236766 Marjorie P. Wilber DEPUTY

S 11/23/90 DM HI 11/29/90 DM
 P 7-25-90 RT CKD 12/14/90 DM

STATE DOCUMENTARY FEE
 DATE 6-1-89
Exempt

200 words per line OCT 12 1991

No monetary consideration paid.
 Actual consideration stated in document. Oct

149

In Witness Whereof, The said party of the first part has hereunto set its hand and seal the day and year first above written.

STATE OF COLORADO
Roy Romer, Governor

BOOK 477 PAGE 8

Bruce M. McCloskey

By Executive Director
Department of Natural Resources

Bruce M. McCloskey

By Director
Division of Wildlife

STATE OF COLORADO
COUNTY OF ADAMS

)
) ss:
)

(SEAL)

The foregoing instrument was acknowledged before me this 20th day of APRIL, 1989 by *BRUCE MCCLOSKEY* for the Executive Director, Natural Resources and the Director, Division of Wildlife.

Witness by hand and official seal.

My commission expires *JUNE 24, 1990*

James C. Callahan

Notary Public

BOOK 753 PAGE 343

BOOK 477 PAGE 839

Correct as to Engineering Data
Michael P. Helms
 Approved
 CIVIL ENGINEER
 Title

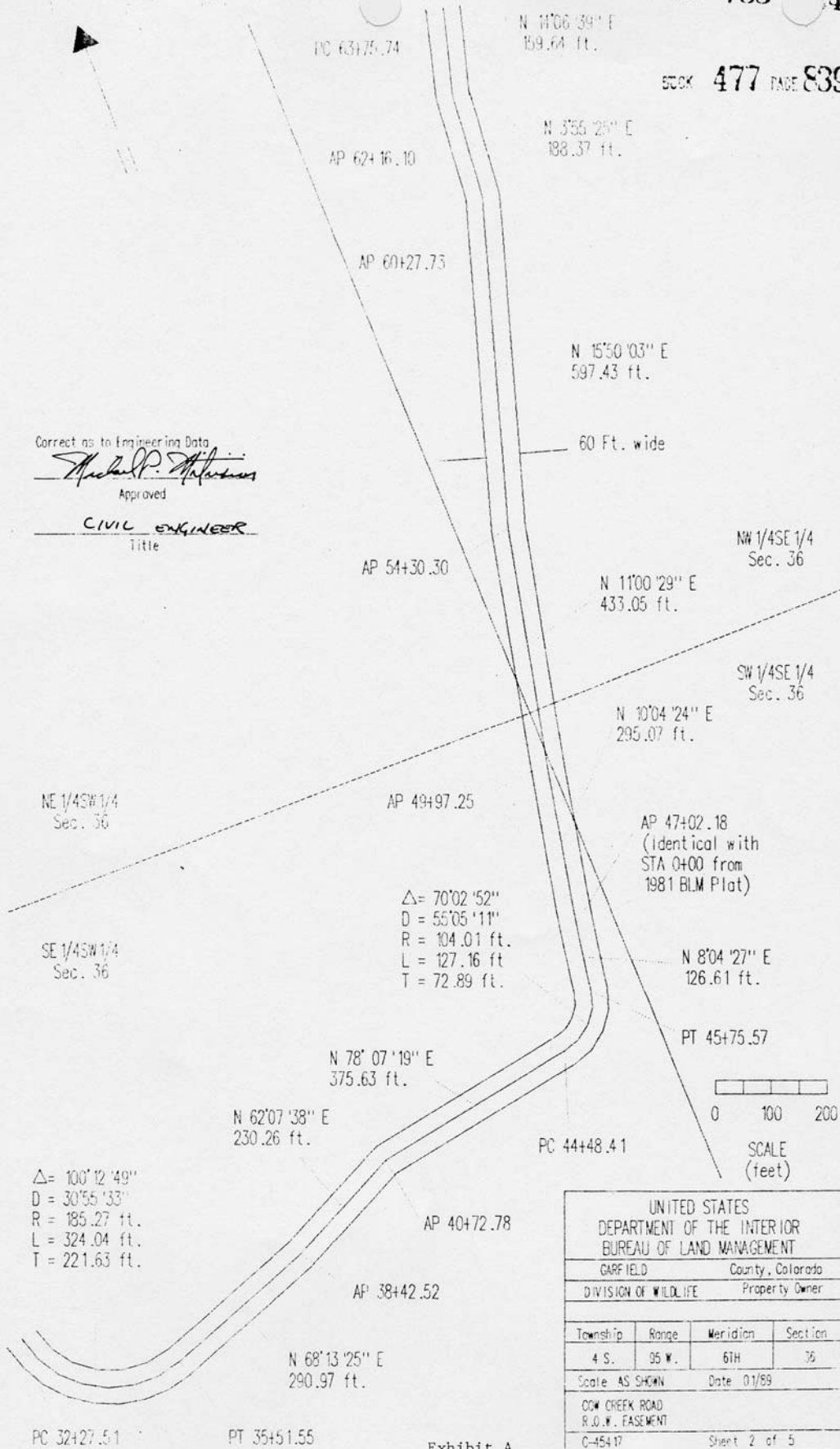


Exhibit A

T. 4 S., R. 95 W.
1/4
Sec. 25 Sec. 36

N 15°16'55" E
93.00 ft.

STA 911.16.47 is
N 88°29'31" E, 633.42 ft.
of the 1/4 corner of
Sections 25 and 36

Section Line
Bearing N 89°35' W
from BLM Plot
dated July 13, 1981

AP 90+22.87

N 11°00'30" E
301.78 ft.

AP 87+21.09

N 6°13'26" E
254.95 ft.

AP 84+66.14

N 4°18'50" E
204.47 ft.

PT 82+61.67

$\Delta = 16'36''04''$
D = 5'03'17"
R = 1133.52 ft.
L = 328.43 ft.
T = 165.37 ft.

N 12°17'14" E
144.29 ft.

PC 79+33.24

NW 1/4NE 1/4
Sec. 36

AP 77+88.95

NE 1/4NW 1/4
Sec. 36

N 5°19'13" E
326.36 ft.

SW 1/4NE 1/4
Sec. 36

AP 74+62.59

SE 1/4NW 1/4
Sec. 36

60 ft. wide

Correct as to Engineering Data

Michael P. Matheson

Approved

CIVIL ENGINEER

Title

N 0°36'25" W
731.16 ft.

PT 67+31.43

$\Delta = 14'43''04''$
D = 4'08'16"
R = 1384.69 ft.
L = 355.69 ft.
T = 178.83 ft.

PC 63+75.74

UNITED STATES DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT			
GARFIELD		County, Colorado	
DIVISION OF WILDLIFE		Property Owner	
Township	Range	Meridian	Section
4 S.	95 W.	6TH	36
Scale AS SHOWN		Date 01/89	
COW CREEK ROAD R.O.W. EASEMENT			
C-4541/		Sheet 3 of 5	

0 100 200

SCALE
(feet)

Exhibit A

T. 4 S., R. 95 W.
Section 24

SIA 14+97.75 is
S 89°44'11" E, 1652.10 ft.
of the 1/4 corner of
Sections 23 and 24

N 47°09'05" E
84.56 ft.

PT 14+13.19

E-W Centerline Sec. 24
Bearing N 88°40'00" W
Assumed from BLM Plat
dated July 13, 1981

PC 13+02.76

N 16°55'18" E
141.16 ft.

$\Delta = 30^{\circ}13'47''$
 $D = 27^{\circ}22'32''$
 $R = 209.29$ ft.
 $L = 110.43$ ft.
 $T = 56.53$ ft.

AP 11+61.60

60 ft. wide

N 11°32'35" E
357.49 ft.

PT 8+04.11

PC 6+49.08

N 36°11'27" E
70.80 ft.

$\Delta = 24^{\circ}38'52''$
 $D = 15^{\circ}53'57''$
 $R = 360.37$ ft.
 $L = 155.03$ ft.
 $T = 78.73$ ft.

PT 5+78.28

PC 3+76.87

N 14°52'55" E
124.58 ft.

N 11°43'40" E
252.29 ft.

AP 2+52.29

$\Delta = 21^{\circ}18'32''$
 $D = 10^{\circ}34'48''$
 $R = 541.55$ ft.
 $L = 201.41$ ft.
 $T = 101.88$ ft.

STA 0+00 is
S 86°40'01" E, 1167.63 ft.
of the S 1/16 corner of
Sections 23 and 24

0 100 200

SCALE
(feet)

Correct as to Engineering Data

Michael P. Peterson
Approved

CIVIL ENGINEER
Title

UNITED STATES			
DEPARTMENT OF THE INTERIOR			
BUREAU OF LAND MANAGEMENT			
GARFIELD		County, Colorado	
DIVISION OF WILDLIFE		Property Owner	
Township	Range	Meridian	Section
4 S.	55 W.	6TH	24
Scale AS SHOWN		Date 01/89	
COW CREEK ROAD R.O.W. EASEMENT			
C-45417		Sheet 4 of 5	

Exhibit A

